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ALEXANDER L. STEVAS
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NO. 81-1809

IN THE SUPREME COURT OF

THE UNITED STATES

OCTOBER TERM 1981

STATE OF ALABAMA,

PETITIONER,

VS.

EDWARD HORSLEY,

RESPONDENT.

RUSSELL J. DRAKE
DRAKE, KNOWLES & PIERCE
Post Office Box 86
Tuscaloosa, Alabama 35402
(205) 759-1234

ATTORNEY FOR RESPONDENT

STATEMENT OF THE CASE

Edward Horsley was convicted in the Circuit Court of Monroe County, Alabama under § 13-11-2(a)(2) Ala. Code (1975), which charged him with the offense of "aggravated robbery," i.e., robbery where the victim is intentionally killed during the course of the robbery. He was sentenced to death. The Alabama Court of Criminal Appeals and the Alabama Supreme Court both affirmed the conviction and death sentence. This Court granted certiorari and reversed and remanded the case in light of Beck v. Alabama, 447 U. S. 625 (1980).

Without opinion, the Alabama Court of Criminal Appeals reversed and remanded the case for new trial. The State of Alabama petitioned the Supreme Court of Alabama for a writ of certiorari to review the Court of Criminal Appeals decision. The writ was denied without opinion. The State of Alabama now asks this Court to issue a writ of certiorari to review the Alabama Courts' decision that Respondent Horsley is entitled to a new trial.

STATEMENT OF FACTS

Edward Horsley and his companion Brian Baldwin seized Naomi Rolon in Hudson, North Carolina. They drove her to Monroe County, Alabama, where Baldwin killed her by striking her with a hatchet.

REASONS WHY THE WRIT SHOULD BE DENIED

The Petition for Certiorari filed by the State of Alabama should be denied for the following reasons:

I. EVIDENCE PRESENTED AT TRIAL WOULD SUPPORT A JURY VERDICT OF A LESSER INCLUDED OFFENSE

In Beck v. Alabama, 447 U.S. 625 (1980), this Court found the Alabama death penalty statute to be unconstitutional in that it totally precluded a jury from considering a lesser included offense. There is no conflict with the Beck decision and the decisions of the Alabama Courts in the instant case.

Respondent here has ample facts to argue to the jury that a verdict of guilty for a lesser included offense should be returned. Those factual considerations include:

(A) The Robbery Occurred In North Carolina.

Throughout his prosecution the State of Alabama has argued that Respondent committed robbery by taking Naomi Rolon's car and car keys from her in North Carolina. If that act or acts constitute robbery then the act or acts were committed in North Carolina. Respondent can argue at his new trial that he did not commit the offense of robbery in Alabama, and therefore, could not be convicted of robbery where the victim is intentionally killed. He can argue that the jury could only convict him of murder, a non-capital offense.

(B) Respondent Did Not Intend To Kill The Victim.

The victim here was killed by a co-defendant. Respondent can argue that, while he may be guilty of non-capital murder, he did not "intentionally" kill the victim and that therefore, he should not be convicted of robbery where the victim is intentionally killed.

Accordingly, on the basis of the State's own evidence, without any affirmative defense by Respondent, Respondent can argue at his new trial, that he is entitled, on the facts, to a verdict of guilty of a lesser included offense.

II. THIS PETITION IS TO BE DISTINGUISHED FROM HOPPER V. EVANS, CASE NO. 80-1714 (CERT. GRANTED JUNE 22, 1981).

The State of Alabama argues that this Petition should not be decided until an opinion is rendered in Hopper v. Evans, supra.

Hopper v. Evans presents different facts, came to this Court by a different route, and presents far more complicated legal issues.

Hopper v. Evans does not factually present the issue of a robbery committed in one state and the killing of the victim in another. Additionally, the victim in Hopper v. Evans was shot by the Defendant Evans. Accordingly, Respondent here has at least two factual arguments not available in Evans.

Moreover, Evans began by habeas corpus and came to this Court by the route of 28 U.S.C. § 1254(1).

Finally, Evans involves a number of complex legal issues, whereas this case is simple and basically fact-based. Evans provides the Court with a full blown opinion [1] to review while here there is not a written opinion by either Alabama Court.

Finally, it should be noted that in Evans the Defendant entered a plea of guilty. Respondent here pleaded not guilty.

CONCLUSION

For the reasons noted above the Petition for Certiorari is due to be denied.

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[1] Evans v. Britton, 628 F.2d 400 (5th Cir. 1981).

Submitted by,

Jack Drake
DRAKE, KNOWLES & PIERCE
Post Office Box 86
Tuscaloosa, Alabama 35402

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Jack Drake, the undersigned attorney, do hereby certify that prior to filing the foregoing or immediately thereafter, I caused to be mailed a true and correct copy of same, United States postage prepaid, and correctly addressed to Hon. Charles Graddick, Edward Carnes, J. Anthony McLain.

Done this 6 day of May, 1982.

Attorney for Respondent

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MOTION TO PROCEED IN FORMA PAUPERIS

Comes now the Respondent Edward Horsley, through counsel, and moves the Court to allow him to proceed in forma pauperis and in support thereof shows as follows:

(1) Edward Horsley is presently an inmate in the Alabama prison system. An affidavit in support of this motion has been sent to Horsley for signing and notarization. The affidavit will be filed in this Court as promptly as possible.

(2) Horsley is indigent. He has no financial resources whatsoever.

At every stage of this case he has been represented by appointed counsel. The undersigned counsel has not been appointed but has donated his services to Respondent.

(3) Horsley is unable to pay the costs and fees normally required by this Court.

(4) Horsley has not initiated this proceeding; he believes that his position to be advanced here should prevail.

Submitted by,

RUSSELL J. DRAKE
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(205) 759-1234

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Russell J. Drake, the undersigned attorney, do hereby certify that prior to filing the foregoing or immediately thereafter I caused a true and correct copy of the foregoing to be mailed, United States postage prepaid and correctly addressed to Charles Graddick, Edward Carnes, and J. Anthony McLain.

Done this 5th day of May, 1982.

Russell J. Drake
Attorney for Respondent